

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

DUANE J. RUGGIER, II,

Plaintiff,

v.

GO MART, INC.,

Defendant.

CIVIL ACTION NO. 2:15-03410
On Removal from the Circuit Court of
Kanawha County, West Virginia
Civil Action No.: 15-C-365

NOTICE OF REMOVAL

To: Cathy S. Gatson, Clerk
Kanawha County Circuit Court
Judicial Building
111 Court Street
Charleston, WV 25301

Thomas H. Peyton, Esquire
Peyton Law Firm, PLLC
2801 First Avenue
P.O. Box 216
Nitro, WV 25143

To the Judges of the United States District Court for the Southern District of West Virginia:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1441, the defendant Go-Mart, Inc. ("Go-Mart"), by counsel, removes this action from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia on the following grounds:

1. On February 23, 2015, the defendant was served by service upon the West Virginia Secretary of State, with a copy of a Summons and Complaint in an action commenced in the Circuit Court of Kanawha County, West Virginia entitled *Duane J. Ruggier, II v. Go Mart, Inc.*, assigned Civil Action No. 15-C-365. Copies of the Summons and Complaint are attached to this Notice as Exhibits A and B, respectively.

2. No further proceedings have occurred in state court. A copy of the Kanawha County Circuit Court Docket Sheet and a copy of the entirety of the circuit court record are attached to this Notice as Exhibits C and D, respectively.

3. This Court has original federal question jurisdiction over this action under 28 U.S.C. § 1331, inasmuch as the complaint constitutes a civil action founded on a claim or right under the laws of the United States. This action, therefore, is one which may be removed to this Court pursuant to 28 U.S.C. § 1441 (b) without regard to the citizenship or residence of the parties, or the amount in controversy.

4. In his Complaint, the plaintiff alleges that one of Go-Mart's stores "failed to maintain its restroom stall in compliance with the West Virginia Human Rights Act and the Americans with Disabilities Act ("ADA"). . . ." (Complaint ¶ 7). In addition, the Complaint alleges that Go-Mart's failure to comply with the Human Rights Act and the ADA prevented him from exiting the bathroom stall. (Complaint ¶ 8).

5. Indeed, only the regulations promulgated in conjunction with the ADA contain specific technical requirements related to the construction and design of places of public accommodation. See 29 CFR Part 36. The Human Rights Act has no such requirements.

6. Therefore, because the plaintiff alleges violations of the ADA, this case is properly removable pursuant to 28 U.S.C. § 1441(a).

7. Even if some of the plaintiff's remaining claims against the defendant do not raise a federal question, this Court had supplemental jurisdiction over such claims. 28 U.S.C. § 1337 recognizes supplemental jurisdiction in federal court:

[I]n any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involved the joinder or intervention of additional parties.

Here, the ADA provides a basis for removal of this action. Thus, even if some of the plaintiff's claims do not raise a federal question independently, the exercise of supplemental jurisdiction over those claims would be appropriate to avoid litigating this case in a piecemeal fashion.

8. This Notice of Removal is filed within thirty (30) days after the defendant received a copy of the initial pleading setting forth the claim up which this action is based.

9. Promptly after filing this Notice of Removal, the defendants will also file a copy of this notice with the Clerk of the Circuit Court of Kanawha County and serve all adverse parties with written notice of the filing of the Notice of Removal.

WHEREFORE, the defendant Go-Mart, Inc., has removed this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia. Therefore, no further proceedings in this action can be had in the Kanawha County Circuit Court.

Respectfully submitted,

GO MART, INC.,

By Counsel

/s/ Erin Elizabeth Magee
ERIN ELIZABETH MAGEE (WVSB # 6078)
ALEXANDRA M. KITTS (WVBN: 12549)
JACKSON KELLY PLLC
500 Lee Street East, Suite 1600
P. O. Box 553
Charleston, West Virginia 25322
(304) 340-1000
emagee@jacksonkelly.com
Counsel for Defendant

EXHIBIT A

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2015 FEB 25 PM 2:56
CATHY S. GRIFFIN, CLERK
KANAWHA COUNTY CIRCUIT COURT

DUANE J. RUGGIER, II,

Plaintiff,

v.

GO MART, INC.,

Defendant.

SERVE: Go Mart, Inc.
c/o John D. Heater
915 Riverside Drive
Gassaway, WV 26624

TO THE ABOVE-NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Thomas H. Peyton, Esquire, Plaintiff's attorney, whose address is Post Office Box 216, Nitro, West Virginia 25143, an answer, including any related counterclaim or defense you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to appear at trial, default will be taken against you for relief demanded in the complaint and judgment will be entered in favor of the plaintiff. You are also required to file and serve any claim you may have which

ACCEPTED FOR
SERVICE OF PROCESS
2015 FEB 23 AM 10:59
SECRETARY OF STATE
STATE OF WEST VIRGINIA

ark

eputy

West Virginia Secretary of State
Invoice #253694
Date: 2/20/2015
PEYTON LAW FIRM PLLC

| Service | Atty Sub |
|------------------------|----------|
| Service - US defendant | 1 |
| 15-C-366 | \$20.00 |
| Total | \$20.00 |

EXHIBIT B

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA *MS*
2015 FEB 19 PM 12:20

DUANE J. RUGGIER, II,

CAN. 15-C-3605
KANAWHA COUNTY CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 15-C-3605
JUDGE: Kaufman

GO MART, INC.,

Defendant.

C O M P L A I N T

1. The Plaintiff, Duane J. Ruggier, II, is an individual who resides in the city of Hurricane, Putnam County, West Virginia.

2. The Defendant, Go-Mart, Inc., is a West Virginia corporation, (hereinafter referred to as "Go-Mart") authorized to and conducting business in Kanawha County, West Virginia.

3. This is a civil rights action filed by the Plaintiff for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as Go-Mart located in the area of Summersville, Nicholas County, West Virginia, and being owned and/or operated by the Defendant.

4. The Plaintiff is diagnosed with multiple sclerosis which substantially limits his ability to walk and/or stand, requiring him to use a power wheelchair when traveling about in public. Consequently, the Plaintiff is physically disabled, as defined by all applicable West Virginia and United States laws, and a member of the public whose rights are protected by these laws.

5. The Go-Mart retail establishment located in the area of Summersville, Nicholas County, West Virginia, is open to the public, is intended for nonresidential use and its operations affect commerce.

6. On or about September 24, 2014, the Plaintiff visited the Go-Mart establishment in the area of Summersville, Nicholas County, West Virginia, and used the restroom offered to the public and customers of Go-Mart.

7. On or about September 24, 2014, the Defendant failed to maintain its restroom stall in compliance with the West Virginia Human Rights Act and the Americans with Disabilities Act at a time when compliance was readily achievable. Specifically, the Defendant installed a toilet paper dispenser immediately above the grab bar adjacent to the toilet rendering the grab bar impossible or impractical to use by a disabled individual such as the Plaintiff.

8. As a direct result of the Defendant's failure to comply with the West Virginia Human Rights Act and the Americans with Disabilities Act, the Plaintiff was not able to exit the restroom stall and fell to the floor in his attempt to do so.

9. Pursuant to West Virginia Code § 5-11-2, it is the public policy of the state of West Virginia to provide all of its citizens equal access to places of public accommodations. Further, equal opportunity in the areas of public accommodations is a human right or civil right of all persons without regard to disability. The denial of these rights to properly qualified persons by reason of disability is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

10. The Plaintiff has a physical impairment which substantially limits one or more of his major life activities, to wit: walking. Therefore, the Plaintiff has a disability as defined by West Virginia Code § 5-11-3(m).

11. The Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia, is a place of public accommodations as defined by West Virginia Code § 5-11-3(j).

12. The Defendant committed unlawful discriminatory practices as defined by West Virginia Code § 5-11-9(6)(a) by refusing, withholding from or denying to the Plaintiff because of his disability, either directly or indirectly, the accommodations, advantages, facilities, privileges or services of the Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia.

13. As a direct and proximate result of the unlawful discriminatory practice of the Defendant, the Plaintiff has suffered damages including humiliation, embarrassment, emotional and mental distress, and loss of person dignity.

14. The Plaintiff seeks all relief available under the West Virginia Human Rights Act including a finding that the Defendant has engaged in or is engaging in an unlawful discriminatory practice, injunctive relief enjoining the Defendant from engaging in such unlawful discriminatory practice and compensation for any and all damages suffered by the Plaintiff.

WHEREFORE, the Plaintiff respectfully requests the following relief:

1. Injunctive relief and affirmative action sufficient to remedy the discriminatory conduct as charged herein;

2. Declaratory relief finding that the Defendant violated the West Virginia Human Rights Act;

3. Judgment for incidental damages pursuant to the West Virginia Human Rights Act;

4. Attorney's fees, litigation expenses, and costs of this action; and
5. Both pre-judgment and post-judgment interest for any award made herein.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE HEREIN.

DUANE J. RUGGIER, II

BY COUNSEL



Thomas H. Peyton, Esquire
West Virginia State Bar No. 8841
PEYTON LAW FIRM, PLLC
2801 First Avenue
P. O. Box 216
Nitro, WV 25143
Telephone: (304) 755-5556
Telefax: (304) 755-1255
Counsel for Plaintiff

EXHIBIT C

A TRUE COPY

TESTED *[Signature]* CLERK / WA
 CIRCUIT COURT KANAWHA COUNTY, W. Va.

| CASE | 15-C-365 | KANAWHA | PAGE | 1 |
|----------------------|----------|--|------|---|
| DUANE J. RUGGIER, II | | vs. GO MART, INC., | | |
| LINE | DATE | ACTION | | |
| 1 | 02/19/15 | # CASE INFO SHEET; COMPLAINT; ISSUED SUM & 2 CPYS; F FEE; RCPT | | |
| 2 | | # 525661; \$200.00 | | |
| 3 | 02/25/15 | # LET FR SS DTD 2/23/15; SUM W/RET (2/23/15 SS) AS TO GO-MART | | |
| 4 | | # INC | | |
| 5 | 03/03/15 | # E-CERT FR SS AS TO GO-MART INC DTD 2/26/15 | | |
| 6 | 03/09/15 | # AMD C; ISSUED SUM & 2 CPYS ON AMD C | | |
| 7 | 03/16/15 | # LET FR SS DTD 3/12/15; SUM W/RET ON AMD C (3/12/15 SS) | | |
| 8 | | # AS TO GO-MART INC | | |

EXHIBIT D

CASE INFORMATION STATEMENT - CIVIL CASES

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

m
2015 FEB 19 PM 12:20

CANON
KANAWHA COUNTY CIRCUIT COURT

I. CASE STYLE:

Plaintiff(s):

DUANE J. RUGGIER, II

vs.

Defendant(s):

GO MART, INC.

Civil Action No.: 15-C-365

Judy Kaufman

| Days to <u>Answer</u> | Type of <u>Service</u> |
|--------------------------|---------------------------|
| 30 | Secretary of State |

II. TYPE OF CASE: Civil Rights, Americans With Disabilities
(i.e. Personal Injury, Miscellaneous Civil, Professional Malpractice, Product Liability, Other Tort, Contract, Real Property, etc.)

III. JURY DEMAND: Yes

CASE WILL BE READY FOR TRIAL BY: February 1, 2016

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? No

Thomas H. Peyton, Esquire
PEYTON LAW FIRM, PLLC
2801 First Avenue
Post Office Box 216
Nitro, West Virginia 25143
(304) 755-5556

Representing: Plaintiff

Dated: 2/17/15

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA *MS*
2015 FEB 19 PM 12:20

DUANE J. RUGGIER, II,

CAN
KANAWHA COUNTY, CIRCUIT COURT

Plaintiff,

v.

CIVIL ACTION NO. 15-C-365
JUDGE: Kaufman

GO MART, INC.,

Defendant.

C O M P L A I N T

1. The Plaintiff, Duane J. Ruggier, II, is an individual who resides in the city of Hurricane, Putnam County, West Virginia.

2. The Defendant, Go-Mart, Inc., is a West Virginia corporation, (hereinafter referred to as "Go-Mart") authorized to and conducting business in Kanawha County, West Virginia.

3. This is a civil rights action filed by the Plaintiff for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as Go-Mart located in the area of Summersville, Nicholas County, West Virginia, and being owned and/or operated by the Defendant.

4. The Plaintiff is diagnosed with multiple sclerosis which substantially limits his ability to walk and/or stand, requiring him to use a power wheelchair when traveling about in public. Consequently, the Plaintiff is physically disabled, as defined by all applicable West Virginia and United States laws, and a member of the public whose rights are protected by these laws.

5. The Go-Mart retail establishment located in the area of Summersville, Nicholas County, West Virginia, is open to the public, is intended for nonresidential use and its operations affect commerce.

6. On or about September 24, 2014, the Plaintiff visited the Go-Mart establishment in the area of Summersville, Nicholas County, West Virginia, and used the restroom offered to the public and customers of Go-Mart.

7. On or about September 24, 2014, the Defendant failed to maintain its restroom stall in compliance with the West Virginia Human Rights Act and the Americans with Disabilities Act at a time when compliance was readily achievable. Specifically, the Defendant installed a toilet paper dispenser immediately above the grab bar adjacent to the toilet rendering the grab bar impossible or impractical to use by a disabled individual such as the Plaintiff.

8. As a direct result of the Defendant's failure to comply with the West Virginia Human Rights Act and the Americans with Disabilities Act, the Plaintiff was not able to exit the restroom stall and fell to the floor in his attempt to do so.

9. Pursuant to West Virginia Code § 5-11-2, it is the public policy of the state of West Virginia to provide all of its citizens equal access to places of public accommodations. Further, equal opportunity in the areas of public accommodations is a human right or civil right of all persons without regard to disability. The denial of these rights to properly qualified persons by reason of disability is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

10. The Plaintiff has a physical impairment which substantially limits one or more of his major life activities, to wit: walking. Therefore, the Plaintiff has a disability as defined by West Virginia Code § 5-11-3(m).

11. The Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia, is a place of public accommodations as defined by West Virginia Code § 5-11-3(j).

12. The Defendant committed unlawful discriminatory practices as defined by West Virginia Code § 5-11-9(6)(a) by refusing, withholding from or denying to the Plaintiff because of his disability, either directly or indirectly, the accommodations, advantages, facilities, privileges or services of the Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia.

13. As a direct and proximate result of the unlawful discriminatory practice of the Defendant, the Plaintiff has suffered damages including humiliation, embarrassment, emotional and mental distress, and loss of person dignity.

14. The Plaintiff seeks all relief available under the West Virginia Human Rights Act including a finding that the Defendant has engaged in or is engaging in an unlawful discriminatory practice, injunctive relief enjoining the Defendant from engaging in such unlawful discriminatory practice and compensation for any and all damages suffered by the Plaintiff.

WHEREFORE, the Plaintiff respectfully requests the following relief:

1. Injunctive relief and affirmative action sufficient to remedy the discriminatory conduct as charged herein;

2. Declaratory relief finding that the Defendant violated the West Virginia Human Rights Act;

3. Judgment for incidental damages pursuant to the West Virginia Human Rights Act;

4. Attorney's fees, litigation expenses, and costs of this action; and
5. Both pre-judgment and post-judgment interest for any award made herein.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE HEREIN.

DUANE J. RUGGIER, II
BY COUNSEL



Thomas H. Peyton, Esquire
West Virginia State Bar No. 8841
PEYTON LAW FIRM, PLLC
2801 First Avenue
P. O. Box 216
Nitro, WV 25143
Telephone: (304) 755-5556
Telefax: (304) 755-1255
Counsel for Plaintiff

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

RECD
2015 FEB 25 PM 2:56
CATHY S. GATSON CLERK
KANAWHA COUNTY CIRCUIT COURT



Cathy Gatson
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301-2500

Natalie E. Tennant
Secretary Of State
State Of West Virginia
Phone: 304-558-6000
866-767-8683
Visit us online:
www.wvsos.com

Control Number: 51518

Agent: JOHN D. HEATER

Defendant: GO-MART, INC.
915 RIVERSIDE DR
GASSAWAY, WV 26624-1127 US

County: Kanawha

Civil Action: 15-C-365

Certified Number: 92148901125134100000554933

Service Date: 2/23/2015

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Natalie E. Tennant

Natalie E. Tennant
Secretary of State

3-4

FILED

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CATHY S. GRIFFIN, CLERK
KANAWHA COUNTY CIRCUIT COURT

DUANE J. RUGGIER, II,

Plaintiff,

v.

GO MART, INC.,

Defendant.

SERVE: Go Mart, Inc.
 c/o John D. Heater
 915 Riverside Drive
 Gassaway, WV 26624

TO THE ABOVE-NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Thomas H. Peyton, Esquire, Plaintiff's attorney, whose address is Post Office Box 216, Nitro, West Virginia 25143, an answer, including any related counterclaim or defense you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to

... default will be taken against you for relief demanded in the complaint and ... action any claim you may have which

ACCEPTED FOR
 SERVICE OF PROCESS
 2015 FEB 23 AM 10:59
 SECRETARY OF STATE
 STATE OF WEST VIRGINIA

ARK

eputy

West Virginia Secretary of State
 Invoice #253694
 Date: 2/20/2015
 PEYTON LAW FIRM PLLC

| Service | Qty | Sub |
|------------------------|---------|---------|
| Service - US defendant | 1 | \$20.00 |
| Total | | \$20.00 |
| Payment type | Amount | |
| Check | \$20.00 | |
| Total | | \$20.00 |

Civil Action Number 15-C-365
Package Identification Code 92148901125134100000554933
Signature Downloaded 3/2/2015 6:03:06 AM
Defendant Name GO-MART, INC.

FILED
2015 MAR -3 AM 8:41

CATHY S. COON CLERK
KANAWHA COUNTY CIRCUIT COURT

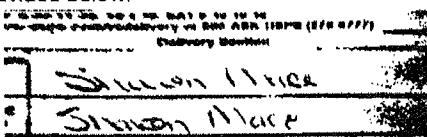


Date Produced: 03/02/2015

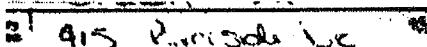
WEST VIRGINIA SECRETARY OF STATE:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 1251 3410 0000 5549 33. Our records indicate that this item was delivered on 02/26/2015 at 11:28 a.m. in GAESAWAY, WV 26624. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 55493

5

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DUANE J. RUGGIER, II,

Plaintiff,

v.

GO MART, INC.,

Defendant.

2015 MAR -9 PM 4:41
KANAWHA COUNTY CIRCUIT COURT
CIVIL ACTION NO. 15-C-365
JUDGE: KAUFMAN

SERVE: Go Mart, Inc.
c/o John D. Heater
915 Riverside Drive
Gassaway, WV 26624

TO THE ABOVE-NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Thomas H. Peyton, Esquire, Plaintiff's attorney, whose address is Post Office Box 216, Nitro, West Virginia 25143, an answer, including any related counterclaim or defense you may have to the **amended complaint** filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: March 9 2015

Cathy S. Gatson, Clerk

CLERK OF COURT

BY: M. Hammie, Deputy

ISS SUM 2 CPS
AMD C
185.00 CLK TEE-
RH526345
\$20.00 CLK SECY 07/15

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DUANE J. RUGGIER, II,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-368
JUDGE: KAUFMAN

GO MART, INC.,

Defendant.

AMENDED COMPLAINT

1. The Plaintiff, Duane J. Ruggier, II, is an individual who resides in the city of Hurricane, Putnam County, West Virginia.

2. The Defendant, Go-Mart, Inc., is a West Virginia corporation, (hereinafter referred to as "Go-Mart") authorized to and conducting business in Kanawha County, West Virginia.

3. This is a civil rights action filed by the Plaintiff for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as Go-Mart located in the area of Summersville, Nicholas County, West Virginia, and being owned and/or operated by the Defendant.

4. The Plaintiff is diagnosed with multiple sclerosis which substantially limits his ability to walk and/or stand, requiring him to use a power wheelchair when traveling about in public. Consequently, the Plaintiff is physically disabled, as defined by all applicable West Virginia and United States laws, and a member of the public whose rights are protected by these laws.

6

5. The Go-Mart retail establishment located in the area of Summersville, Nicholas County, West Virginia, is open to the public, is intended for nonresidential use and its operations affect commerce.

6. On or about September 24, 2014, the Plaintiff visited the Go-Mart establishment in the area of Summersville, Nicholas County, West Virginia, and used the restroom offered to the public and customers of Go-Mart.

7. On or about September 24, 2014, the Defendant failed to maintain its restroom stall in compliance with the West Virginia Human Rights Act and the Americans with Disabilities Act at a time when compliance was readily achievable. Specifically, the Defendant installed a toilet paper dispenser immediately above the grab bar adjacent to the toilet rendering the grab bar impossible or impractical to use by a disabled individual such as the Plaintiff.

8. As a direct result of the Defendant's failure to comply with the West Virginia Human Rights Act and the Americans with Disabilities Act, the Plaintiff was not able to exit the restroom stall and fell to the floor in his attempt to do so.

9. Pursuant to West Virginia Code § 5-11-2, it is the public policy of the state of West Virginia to provide all of its citizens equal access to places of public accommodations. Further, equal opportunity in the areas of public accommodations is a human right or civil right of all persons without regard to disability. The denial of these rights to properly qualified persons by reason of disability is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

10. The Plaintiff has a physical impairment which substantially limits one or more of his major life activities, to wit: walking. Therefore, the Plaintiff has a disability as defined by West Virginia Code § 5-11-3(m).

11. The Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia, is a place of public accommodations as defined by West Virginia Code § 5-11-3(j).

12. The Defendant committed unlawful discriminatory practices as defined by West Virginia Code § 5-11-9(6)(a) by refusing, withholding from or denying to the Plaintiff because of his disability, either directly or indirectly, the accommodations, advantages, facilities, privileges or services of the Go-Mart establishment located in the area of Summersville, Nicholas County, West Virginia.

13. As a direct and proximate result of the unlawful discriminatory practice of the Defendant, the Plaintiff has suffered damages including humiliation, embarrassment, emotional and mental distress, and loss of person dignity.

14. The Plaintiff seeks all relief available under the West Virginia Human Rights Act including a finding that the Defendant has engaged in or is engaging in an unlawful discriminatory practice, injunctive relief enjoining the Defendant from engaging in such unlawful discriminatory practice and compensation for any and all damages suffered by the Plaintiff.

15. The Defendant had actual knowledge that its facility was in violation of the West Virginia Human Rights Act prior to September 24, 2014, and willfully, wantonly, intentionally and/or in total disregard for the civil rights of the Plaintiff failed and refused to modify its facility to comply with the West Virginia Human Rights Act.

WHEREFORE, the Plaintiff respectfully requests the following relief:

1. Injunctive relief and affirmative action sufficient to remedy the discriminatory conduct as charged herein;

2. Declaratory relief finding that the Defendant violated the West Virginia Human Rights Act;
3. Judgment for incidental damages pursuant to the West Virginia Human Rights Act;
4. Attorney's fees, litigation expenses, and costs of this action;
5. Judgment for punitive damages in amount sufficient to deter future unlawful conduct as alleged herein; and
6. Both pre-judgment and post-judgment interest for any award made herein.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE HEREIN.

DUANE J. RUGGIER, II

BY COUNSEL



Thomas H. Peyton, Esquire
West Virginia State Bar No. 8841
PEYTON LAW FIRM, PLLC
2801 First Avenue
P. O. Box 216
Nitro, WV 25143
Telephone: (304) 755-5556
Telefax: (304) 755-1255
Counsel for Plaintiff

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

2015 MAR 16 PM 3:30
CATHY S. GATSON, ZRK
KANAWHA COUNTY CIRCUIT COURT



Cathy Gatson
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301-2500

Natalie E. Tennant
Secretary Of State
State Of West Virginia
Phone: 304-558-6000
866-767-8683
Visit us online:
www.wvsos.com

Control Number: 53864

Defendant: GO-MART, INC.
915 RIVERSIDE DR
GASSAWAY, WV 26624-1127 US

Agent: JOHN D HEATER

County: Kanawha

Civil Action: 15-C-365

Certified Number: 92148901125134100000578014

Service Date: 3/12/2015

I am enclosing:

1 summons and amended complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Natalie E. Tennant

Natalie E. Tennant
Secretary of State

7-8

SUMMONS

2015 MAR 16 PM 3:30

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

KANAWHA COUNTY CIRCUIT COURT

DUANE J. RUGGIER, II,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-365

JUDGE: KAUFMAN

GO MART, INC.,

Defendant.

SERVE: Go Mart, Inc.
c/o John D. Heater
915 Riverside Drive
Gassaway, WV 26624

TO THE ABOVE-NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Thomas H. Peyton, Esquire, Plaintiff's attorney, whose address is Post Office Box 216, Nitro, West Virginia 25143, an answer, including any related counterclaim or defense you may have to the amended complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, you may be held in contempt of court.

Dated: 3/11/2015

West Virginia Secretary of State
Peyton
Date: 3/11/2015
Address: 55694

| Service Type | Amount | Total |
|------------------------|---------|---------|
| Service - US Defendant | \$20.00 | \$20.00 |
| Service - Total | \$20.00 | \$20.00 |
| Service - Date | \$0.00 | \$0.00 |

MAR 11 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

DUANE J. RUGGIER, II,

Plaintiff,

v.

CIVIL ACTION NO. _____
On Removal from the Circuit Court of
Kanawha County, West Virginia
Civil Action No.: 15-C-365

GO MART, INC.,

Defendant.

CERTIFICATE OF SERVICE

I, Erin Elizabeth Magee, counsel for the defendant, hereby certify that service of the foregoing *Notice of Removal* was made upon the plaintiff and the Clerk of the Kanawha County Circuit Court, as follows:

Thomas H. Peyton, Esquire
Peyton Law Firm, PLLC
2801 First Avenue
P.O. Box 216
Nitro, WV 25143
Counsel for Plaintiff

Cathy S. Gatson, Clerk
Kanawha County Circuit Court
Judicial Annex
111 Court Street
Charleston, WV 25301

on the 20th day of March, 2015.

/s/ Erin Elizabeth Magee

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DUANE J. RUGGIER, II

(b) County of Residence of First Listed Plaintiff PUTNAM
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas H. Peyton, PO Box 216, Nitro, WV 25143
(304) 755-5556**DEFENDANTS**

GO MART, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Erin E. Magee, PO Box 553, Charleston, WV 25322
(304) 340-1360**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

| | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|--|---|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | PROPERTY RIGHTS | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud Act | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | LABOR | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 861 HIA (1395f) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 720 Labor/Management Relations | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 850 Securities/Commodities/ Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 863 DIWC/DIWV (405(g)) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 196 Franchise | | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 891 Agricultural Acts |
| | | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 865 RSI (405(B)) | <input type="checkbox"/> 893 Environmental Matters |
| | | <input type="checkbox"/> 791 Employee Retirement Income Security Act | | <input type="checkbox"/> 895 Freedom of Information Act |
| | | | SOCIAL SECURITY | <input type="checkbox"/> 896 Arbitration |
| | | | <input type="checkbox"/> 861 HIA (1395f) | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| | | | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| | | | <input type="checkbox"/> 863 DIWC/DIWV (405(g)) | |
| | | | <input type="checkbox"/> 864 SSID Title XVI | |
| | | | <input type="checkbox"/> 865 RSI (405(B)) | |
| | | | FEDERAL TAX SUITS | |
| | | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | |
| | | | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |
| | | | | |
| | | | IMMIGRATION | |
| | | | <input type="checkbox"/> 462 Naturalization Application | |
| | | | <input type="checkbox"/> 465 Other Immigration Actions | |

V. ORIGIN (Place an "X" in One Box Only)

| | | | | | |
|--|--|--|---|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|--|--|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC §12101**VI. CAUSE OF ACTION**Brief description of cause:
Discrimination in violation of Americans with Disabilities Act**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S)**

IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

03/20/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Erin E. Magee

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE